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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Extension of Time of the
Local Number Portability
Phases III and IV Implementation

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CC Docket No. 95-116

**PETITION FOR WAIVER OF
TIME WARNER COMMUNICATIONS HOLDINGS INC.**

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
(202) 328-8000

ATTORNEYS FOR TIME WARNER
COMMUNICATIONS HOLDINGS
INC.

May 22, 1998

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**PETITION FOR WAIVER OF
TIME WARNER COMMUNICATIONS HOLDINGS INC.**

Time Warner Communications Holdings Inc. ("TWComm") hereby petitions the Commission for relief from the requirement that carriers file petitions for extensions of the Commission's local number portability ("LNP") implementation schedule at least 60 days prior to the deadline for which the extension is sought.¹ In a petition ("Extension Petition") filed along with the instant waiver request, TWComm seeks an extension (if necessary) of the Phase III implementation deadline of June 30, 1998 for its Charlotte, NC system, as well as an extension (if necessary) from the Phase IV implementation deadline for its Honolulu, HI, Raleigh, NC and Memphis, TN systems. As of the filing of the extension request, there are fewer than 60 days until June 30, 1998, the deadline for implementation of number portability in Phase III MSAs. TWComm therefore requests a waiver of the 60 day

¹ This requirement is set forth at 47 C.F.R. § 52.23(e).

requirement for the purposes of Charlotte, the only Phase III MSA for which it seeks an extension in the Extension Petition.

Any Commission rule may be waived upon a showing of "good cause" for such waiver.² To satisfy the good cause standard, the petitioner must demonstrate that special circumstances warrant such deviation and that such deviation will serve the public interest.³

The special circumstances which TWComm faces in attempting to comply with the FCC's rules for LNP implementation in the BellSouth region justify a waiver in this case, and such a waiver will serve the public interest. First, TWComm has made a conscientious effort to apply for any necessary waivers of the FCC's LNP implementation deadlines in a timely fashion. For example, TWComm previously filed a timely extension request for the Phase II MSAs in the BellSouth region which the FCC subsequently granted.⁴

Further, TWComm did not ask for an extension of the Phase III deadline in the Southeast region in its previous extension request because it did not anticipate that the FCC would ever

² See 47 C.F.R. § 1.3; Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164 (D.C. Cir. 1990).

³ See Northeast Cellular at 1165.

⁴ See Telephone Number Portability, CC Dkt. No. 95-116, Order (rel. May 15, 1998) ("BellSouth Extension Order"). The BellSouth Extension Order also addressed the extension requests of various other carriers.

extend that deadline for BellSouth.⁵ It simply did not seem plausible to TWComm that BellSouth would receive such a waiver. In fact, it is still not clear that the FCC will grant such an extension. In the BellSouth Extension Order, the Commission granted BellSouth's request to extend its Phase II deadline, but did not address BellSouth's extension request for Phases III and IV.⁶ However, the FCC did extend the deadline for Phase II MSAs in the BellSouth region to September 30, 1998,⁷ which is beyond even the Phase III deadline of June 30, 1998. TWComm is therefore concerned that the FCC may in the future extend the Phase III deadline for the BellSouth region.

But TWComm did not become aware that it may have misjudged the likelihood of a Phase III waiver in the Southeast region until after the 60 day deadline for filing a Phase III extension request had passed. This is because the BellSouth Extension Order was released on May 15th, two weeks after the deadline for carriers to seek an extension of the Phase III implementation deadline (May 1st).

⁵ As explained in the Extension Petition, TWComm is ready to implement LNP in Charlotte in accordance with the FCC's schedule (TWComm will use a third party vendor to perform LNP database querying), and TWComm seeks an extension of the Phase III deadline only if BellSouth receives an extension.

⁶ See id. at ¶ 37 (stating that, "[b]efore we address BellSouth's requests for delays of Phase III and Phase IV LNP implementation, we will continue to monitor the progress BellSouth is making in implementing LNP consistent with the representations it has made to the Bureau . . .").

⁷ See id. at ¶ 35.

TWComm respectfully submits that these extenuating circumstances justify a waiver of the 60 day requirement. TWComm should not be punished where, in its good faith effort to comply with the FCC's LNP rules, it may have misjudged the likelihood of a Phase III waiver for BellSouth. That the agency itself has not even resolved the issue makes a waiver here even more appropriate. TWComm has been forced to infer from the recent BellSouth Extension Order the possibility that the FCC might in the future make it necessary for carriers to file extension requests for Phase III (and Phase IV).⁸

Furthermore, the 60 day notice requirement would seem to be unnecessary for a waiver request such as TWComm's. The FCC's apparent reason (it has not explicitly articulated one)⁹ for establishing the 60 day notice requirement is to give the agency the time to assess the highly technical issues involved in many such requests. However, TWComm's extension request is simple. It asks only that TWComm not be required to turn-up its LNP capabilities where the incumbent LEC is not required to do so.

Finally, it would seem that this is exactly the context in which the public interest is served by a waiver of the 60 day

⁸ TWComm realizes now that the better approach would have been simply to seek a protective waiver of all MSAs for which any ILEC sought an extension.

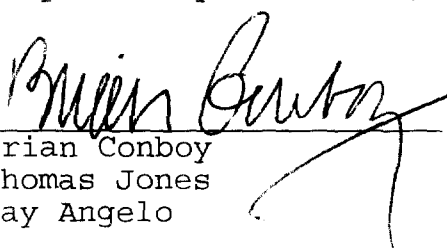
⁹ See Telephone Number Portability, First Report and Order, 11 FCC Rcd 8352 at ¶ 85 (1996) (establishing 60 day rule without an explanation as to why the 60 day notice is necessary).

requirement. TWComm is ready at this time to turn-up its LNP systems in accordance with the Commission's implementation schedule. It is only the failure of the incumbent BellSouth to comply with the FCC's implementation schedule that has caused TWComm to request an extension. Moreover, as a CLEC and a leading proponent of the need for LNP, TWComm has no incentive to delay the implementation of LNP. A denial of this waiver request would require TWComm to incur the cost of completing implementation of LNP before any BellSouth numbers can be ported in Charlotte, thus frustrating the very purpose of LNP.

CONCLUSION

Based on the foregoing, TWComm respectfully requests that the Commission grant it a waiver of the 60-day requirement set forth at 47 C.F.R. § 52.23(e) for TWComm's Extension Petition for an extension of the applicable deadline for implementing long term number portability in the Charlotte MSA.

Respectfully submitted,


Brian Conboy
Thomas Jones
Jay Angelo

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
(202) 328-8000

ATTORNEYS FOR TIME WARNER
COMMUNICATIONS HOLDINGS
INC.

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